REMARKS

In this Amendment, Applicant has canceled claims 1-2, 4 and 7-9 from further consideration in this application. Applicant is not conceding the subject matter encompassed by claims 1-2, 4 and 7-9, prior to this Amendment is not patentable over the art cited by the Examiner. Claims 1-2, 4 and 7-9 were canceled in this Amendment solely to facilitate expeditious prosecution of the application. Applicant respectful reserves the right to pursue claims, including the subject matter of claims in one or more continuing application.

Accordingly, claims 5 and 11-17 are all the claims pending in the application.

Further, the Title of the application and the Summary of the Invention section in the specification are amended for conformity with the method claims currently pending in the application. The changes being made are simply editorial in nature and no question of new matter arise.

As a preliminary matter, Applicants submit that since claim 5 was not previously amended in response to the previous Office Action of December 11, 2007, and since the Examiner is applying a new grounds of rejection, the finality of the rejection is improper. During an interview conducted on August 29, 2008, the Examiner agreed that the finality of the Office Action was improper and agreed to treat the instant Office Action as a non-final Office Action.

Claims rejections under 35 U.S.C. § 102(e)

Claims 1-2, 4-5, 7-9, 11, 13-16 are rejected under 35 U.S.C. § 102(e) as allegedly being

anticipated by Sadjadi (U.S. Patent No. 6,850,938). Applicants traverse the rejection for at least

the following reasons.[1]

Claims 1-2, 4 and 7-9 were cancelled in this Amendment, and therefore the rejection of

these claims are moot.

Claim 5

Claim 5 recites, *inter alia*, "returning a defined error condition indicator to the

application when the application has forwarded the online protocol indicator and when identified

system resources are determined to be scarce." Applicants respectfully submit that Sadjadi does

not disclose these features of claim 5 for at least the following reasons.

Sadjadi is directed to sharing access to a computer resource among distributed users, and

particularly to techniques for optimistic locking of a shared computer resource objects, such as a

database object in a database (column 1, lines 6-11). Sadjadi discloses generating a lock data

structure or "lock" that includes data indicative of values for a database object identification, a

lock type, and a version number. The version number is related to a number of changes to the

database object since the lock data structure was generated. Further, a request from requesting

process is requested for a requested lock type for access to the particular database object. It is

determined whether to grant the request based on the requested lock type and the lock type in the

lock data structure (column 3, lines 60 - column 4, lines 7). However, Sadjadi does not disclose

returning a defined error condition indicator to the application when the application has

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[1] During an interview conducted on August 29, 2008, the Examiner stated that claim 5 was rejected on
same ground as claim 1.

forwarded the online protocol indicator **and** when identified system resources are determined to be scarce.

Specifically, in FIG. 3A and 3B, Sadjadi discloses a method for updating a database object using optimistic locks. According to Sadjadi, a database application sends a command to the database server to update a particular database record (310). The database server receives the request for the database application and requests an optimistic lock form the lock manger (320). The lock manager responds to the request for an optimistic lock by either denying the request or returning a lock object (330). If the request for a lock was denied, the control passes back to step 320. However, if the optimistic lock is granted, then the database server sends an updated record to the database application (352). The database application determines whether the local copy with the modified contents acceptable to commit to the database, or whether a transaction abort should occur (column 11, line 42 - column 12, line 62).

MPEP states that ""A claim is anticipated **only if each and every element as set forth in the claim is found**, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)." It is clear from the portions of Sadjadi described above, that at least the features of returning a defined error condition indicator to the application when the application has forwarded the online protocol indicator and when identified system resources are determined to be scarce are not disclosed in Sadjadi. That is, Sadjadi discloses a method or request for an optimistic lock and granting or denying the lock based on some determination. However, requesting for an optimistic lock fails to disclose returning a defined error condition indicator to the application

(i) when the application has forwarded the online protocol indicator

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AND

(ii) when identified system resources are determined to be scarce.

Furthermore, Sadjadi fails to disclose receiving a commit statement from the application when a response from the database server is determined to comprise the defined error condition indicator. In particular, since Sadjadi does not disclose returning a defined error condition indicator as recited in the claim, accordingly, Sadjadi also does not disclose receiving a commit statement from the application when a response from the database server is determined to comprise **the defined error condition indicator** (as recited in claim 1).

Claims 11 and 13-16

Applicants submit that claims 11 and 13-16 depend from claim 5, and therefore are allowable at least by virtue of their dependency on claim 5 and the additional features recited in the claims.

Claim rejection under 35 U.S.C. § 103(a)

Claim 12 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sadjadi in view of McDaniel (U.S. 6,175,732).

Claim 12

Applicants submit that since claim 12 depends from claim 5, and since McDaniel does not cure the deficiency noted above with regard to claim 5, claim 12 is allowable at least by virtue of its dependency on claim 5 and the additional features recited in the claim.

Claims 17 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sadjadi in view of Aigen (U.S. Publication No. 2003/0233632).
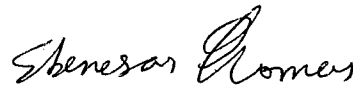
Claim 17

Applicants submit that since claim 17 depends from claim 5, and since Aigen does not

cure the deficiency noted above with regard to claim 5, claim 17 is allowable at least by virtue of

its dependency on claim 5 and the additional features recited in the claim.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed

to be in order, and such actions are hereby solicited. If any points remain in issue which the

Examiner feels may be best resolved through a personal or telephone interview, the Examiner is

kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue

Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any

overpayments to said Deposit Account.

Respectfully submitted,

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Date: September 10, 2008